

David I. Schoen (*Pro Hac Vice*)
 Attorney at Law
 2800 Zelda Road, Suite 100-6
 Montgomery, Alabama 36106
 Telephone: 334-395-6611
 E-Mail: Schoenlawfirm@gmail.com

Soyeun D. Choi, Esq., PC (SBN 211344)
 969G Edgewater Blvd, 314
 Foster City, CA 94404
 Telephone: (650) 380-6116
 E-mail: Soyeun@SoyeunEsq.com

Counsel for All Plaintiffs

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

PEACE AND FREEDOM PARTY;	:	Case No. 3:24-cv-08308-MMC
LIBERTARIAN PARTY OF CALIFORNIA;	:	
GREEN PARTY OF CALIFORNIA;	:	
AMERICAN SOLIDARITY PARTY OF CALIFORNIA;	:	
GAIL LIGHTFOOT;	:	
JOE DEHN;	:	FIRST AMENDED COMPLAINT
SEAN DOUGHERTY;	:	
WILLIAM PATTERSON;	:	
AARON REVELES;	:	
SHANNEL PITTMAN,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Dr. SHIRLEY N. WEBER,	:	
California Secretary of State,	:	
	:	
Defendant.	:	

FIRST AMENDED COMPLAINT

“It is expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues.” *Lubin v. Panish*, 415 U.S. 709 (1974).

“The right of individuals to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively are protected against federal and state encroachment by the First Amendment.” *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968).

FIRST AMENDED COMPLAINT

INTRODUCTION

The Plaintiffs in this case are minor political parties operating in California, minor political party candidates for relevant political offices in California, and California voters who would like to cast their votes in the general election for minor party candidates, independent candidates, or write-in candidates.

Plaintiffs bring this action to challenge the constitutionality of Article II, §5 of the California Constitution and corresponding provisions in California's election code that provide for an electoral process in which only two candidates are permitted access to the general election ballot in California for the offices of United States Senator, Representative in Congress, Governor, Lieutenant Governor, Secretary of State, Controller, Insurance Commissioner, State Treasurer, Attorney General, Member, State Board of Equalization, Member of the State Senate, and Member of the State Assembly. *See* Cal Elec Code § 359.5.

Article II, §5 of the California Constitution provides that as of 2012, only two candidates for any of the elective offices at issue can appear on the general election ballot and these two candidates can only be the top two finishers in a primary election in which all candidates vie. In a Presidential election year, the Top-Two primary is held in March - March 5, 2024, most recently. This is a time frame which repeatedly has been held unconstitutional as applied to minor political parties and independent candidates to select their candidates or declare their candidacies.

There is no route other than the Top-Two primary to the general election ballot for the elective offices at issue. Write-in votes are not permitted. This electoral process will be referred to herein as "Top-Two."

The Top-Two system, since its enactment, has created an unconstitutionally insurmountable barrier to general election ballot access for any minor party or independent candidate. In almost every contest for elective office covered by the Top-Two primary system, in which at least two major party (Republican or Democratic Party) candidates appeared in the primary, no minor party or independent candidate has been allowed access to the general election

1 ballot. Top-Two was devised by the two major party legislators and advocates to keep it that
2 way.¹

3 California's Top-Two system, as applied, violates the rights under the First and Fourteenth
4 Amendments to the United States Constitution of minor parties, their candidates, independent
5 candidates not affiliated with a party, and the rights of voters who wish to vote for and associate
6 with minor political parties, their candidates, and the issues for which they stand.²

7 Plaintiffs herein seek a declaratory judgment that California's Top-Two primary law, as
8 applied to them in their respective capacities, violates the rights guaranteed to them under the First
9 and Fourteenth Amendments to the United States Constitution.

10 JURISDICTION AND VENUE

11 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
12 (Federal Question). Plaintiffs brings this action under 42 U.S.C. § 1983. Plaintiffs also seek

¹ “Although the State has a legitimate -- and indeed critical -- role to play in regulating elections, it must be recognized that it is not a wholly independent or neutral arbiter. Rather, the State is itself controlled by the political party or parties in power, which presumably have an incentive to shape the rules of the electoral game to their own benefit.” *Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (O'Connor, J., concurring in part and concurring in the judgment).

² A Top-Two system in another State has been upheld as constitutional; but as the United States Supreme Court therein noted, the constitutionality of the ballot access implications of a Top-Two system was not raised, *see Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 458, n. 11 (2008). In round two of the case, the Ninth Circuit expressly noted that the primary was in August and **not** in March, as it is here in a presidential election year. *Washington State Grange v. Washington State Republican Party*, 676 F.3d 784, 894 (9th Cir. 2012). A California state appellate court has purported to consider the ballot access implications and upheld the Top-Two primary system; but the decision relies on mistaken facts and a misapplication of the law. *See Rubin v. Padilla*, 233 Cal. App. 4th 1128; 183 Cal. Rptr. 3d 373 (2015).

Additionally, more than nine years have passed since that decision and the evidence during those years further establishes the unconstitutionally insurmountable barrier to gaining ballot access for minor parties and independent candidates the Top-Two primary law imposes. *See e.g., Mandel v. Bradley*, 432 U.S. 173, 177 (1977) (“Past experience will be a helpful, if not always an unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not.”), *quoting from, Storer v. Brown*, 415 U.S. 724, 742 (1974). To date the fundamentally important ballot access implications still have not been considered by any federal court.

1 relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

2 2. This Court is an appropriate venue for this action pursuant to 28 U.S.C. § 1391(b).

3 **PARTIES**

4 3. Plaintiff Peace and Freedom Party is an Oakland, California-based political
5 party with a feminist, socialist agenda. Its candidates have sought elective office in California, but
6 have been unable to gain access to the general election ballot, notwithstanding significant support
7 among the electorate, because of the Top-Two primary system. It is a membership organization
8 and its members support its political agenda. Support for its political agenda and voters who cast
9 and wish to cast their votes for its candidates in California are not limited to members.

10 4. Plaintiff Libertarian Party of California (“LPC”) is the California affiliate of
11 the Libertarian Party. Candidates affiliated with the LPC regularly run for elective office in
12 California, subject to the Top-Two primary law at issue in this case and have been barred from
13 appearing on the general election ballot since the passage of the Top-Two primary law on
14 numerous occasions. Prior to the passage of the Top-Two primary law, LPC candidates regularly
15 had access to the general election ballot for offices that now fall within the ambit of the Top-Two
16 primary law. Its candidates often receive significant support at the polls in the primary, under the
17 Top-Two primary system, but are blocked from appearing on the general election ballot solely
18 because they did not finish in the top two positions in the primary. The LPC has been active at
19 all times relevant to this Complaint in addressing policy issues of great public interest to
20 Californians and nationally. The LPC has continued to seek ballot access in California in many
21 races for elective office, putting forward a platform of smaller government and greater individual
22 freedoms and will do so in the future. It is a membership organization and its members support its
23 political agenda. Support for its political agenda and voters who cast and wish to cast their votes
24 for its candidates in California are not limited to members.

25 5. Plaintiff Green Party of California is a California-based political party which characterizes
26 its platform as working to build an alternative system for a socially and racially just, ecologically

1 sustainable, democratic and peaceful society that exists in harmony with nature. Its candidates for
2 elective office in California have been prevented from appearing on the general election ballot
3 because of the Top-Two primary law, despite significant support for the Party and its platform and
4 candidates among the electorate. It is a membership organization and its members support its
5 political agenda. Support for its political agenda and voters who cast and wish to cast their votes
6 for its candidates in California are not limited to members.

7 6. Plaintiff American Solidarity Party of California is the national party's California chapter.
8 It stands for the sanctity of human life, the necessity of social justice, a shared responsibility to
9 care for the environment, and the promotion of a more peaceful world. Its candidates for elective
10 office in California have been prevented from appearing on the general election ballot because of
11 the Top-Two primary law. Its candidate for President regularly has qualified as a write-in
12 candidate for President in the November general election, notwithstanding California's extremely
13 cumbersome requirements for write-in candidates to appear on the general election ballot for
14 President. It is a membership organization and its members support its political agenda. Support
15 for its political agenda and voters who cast and wish to cast their votes for its candidates in
16 California are not limited to members. Plaintiff American Solidarity Party of California is further
17 unconstitutionally burdened because when its candidates run in the primary, they are prohibited
18 from having their party name appear on the ballot under California Election Code §§ 8002.5 and
19 13105. Their ballot label is just "party preference: none." *Id.*; *See Soltysik v. Padilla*, 910 F.3d
20 438 (9th Cir. 2018).

21 7. Plaintiff Gail Lightfoot is a registered California voter who ran for the United States
22 Senate in 2024 as a Libertarian Party of California candidate, but was denied access to the general
23 election ballot because of the Top-Two primary law. She also wanted to cast her vote in the
24 general election for herself and other Libertarian candidates, but all were denied ballot access
25 because of the Top-Two primary. Ms. Lightfoot, alternatively, would at least like to have been
26 able to submit her name and other minor party candidates as write-in candidates in the general

1 election; but this, too, was barred by the Top-Two primary law.

2 8. Plaintiff Joe Dehn is a registered California voter who ran for the
3 United States House, seeking to be the elected Representative from California's 17th House
4 District in 2024 as a Libertarian Party of California candidate, but was denied access to the
5 general election ballot because of the Top-Two primary law. He also wanted to cast his vote in
6 the general election for himself and other Libertarian candidates, but all were denied ballot access
7 because of the Top-Two primary. Mr. Dehn, alternatively, would at least like to have been able to
8 submit his name and other minor party candidates as write-in candidates in the general election;
9 but this, too, was barred by the Top-Two primary law.

10 9. Plaintiff Sean Dougherty is a registered California voter who ran for the
11 United States House, seeking to be the elected Representative from California's 19th House
12 District in 2024 as a Green Party of California candidate, but was denied access to the general
13 election ballot because of the Top-Two primary law. He also wanted to cast his vote in the
14 general election for himself and other Green Party candidates, but all were denied ballot access
15 because of the Top-Two primary. Mr. Dougherty, alternatively, would at least like to have been
16 able to submit his name and other minor party candidates as write-in candidates in the general
17 election; but this, too, was barred by the Top-Two primary law.

18 10. Plaintiff William Patterson is a registered California voter who ran for a
19 seat in the United States House, seeking to be the elected Representative from California's 28th
20 House District in 2024 as a Peace and Freedom Party of California candidate, but was denied
21 access to the general election ballot because of the Top-Two primary law. He also wanted to cast
22 his vote in the general election for himself and other Peace and Freedom Party candidates, but all
23 were denied ballot access because of the Top-Two primary. Mr. Patterson, alternatively, would at
24 least like to have been able to submit his name and other minor party candidates as write-in
25 candidates in the general election; but this, too, was barred by the Top-Two primary law.

26 11. Plaintiff Aaron Reveles is a registered California voter who ran for a

1 seat in the United States House, seeking to be the elected Representative from California's 34th
2 House District in 2024 as a Peace and Freedom Party of California candidate, but was denied
3 access to the general election ballot because of the Top-Two primary law. He also wanted to cast
4 his vote in the general election for himself and other Peace and Freedom Party candidates, but all
5 were denied ballot access because of the Top-Two primary. Mr. Reveles, alternatively, would at
6 least like to have been able to submit his name and other minor party candidates as write-in
7 candidates in the general election; but this, too, was barred by the Top-Two primary law.

8 12. Plaintiff Shannel Pittman is a registered California voter who ran for a
9 seat in the California Assembly, seeking to be the elected Representative from the 52nd Assembly
10 District, as a Green Party of California candidate, but was denied access to the general election
11 ballot because of the Top-Two primary law. She also wanted to cast her vote in the general
12 election for herself and other Green Party candidates, but all were denied ballot access because of
13 the Top-Two Primary. Ms. Pittman would at least like to have been able to submit her name and
14 other minor party candidates as write-in candidates in the general election; but this, too, was
15 barred by the Top-Two primary law.

16 13. All Plaintiffs are resident-citizens of California.

17 14. Each individual Plaintiff who has been a candidate intends to run for
18 elective office again and vote again in California and each political party Plaintiff intends to field
19 candidates and to associate with voters who support their respective agendas and political
20 positions in the future.

21 15. Defendant Dr. Shirley N. Weber, a resident-citizen of California, serves as
22 Secretary of State for the State of California and, among her other job duties, she is responsible
23 for administering and enforcing the laws and procedures governing elections in California,
24 including the application of the Top-Two primary system.

25 **FACTS**

26 16. The Top-Two system in California was added to the California

1 Constitution by Proposition 14, which was placed on the ballot by the California Legislature in
2 2009 and passed by voters the following year. It became effective as of January 1, 2011.

3 17. Under the system, statewide executive and state and federal legislative
4 offices are designated “voter-nominated offices.” The Top-Two system in California is not a non-
5 partisan system.

6 18. In non-presidential election years, when there is a general election in
7 November, a primary election is held in June for voter-nominated offices in which all voters and
8 candidates, without regard to party affiliation, participate.

9 19. In years in which there is a presidential election in November, the primary
10 election for voter-nominated offices and for president are consolidated and the primary is held on
11 the first Tuesday after the first Monday in March. Cal. Elec. Code §1202.

12 20. In 2024, the Top-Two primary for voter-nominated offices in California was
13 held on March 5, 2024.

14 21. The Top-Two primary does not elect any candidate for any office; in fact,
15 even if there is only one candidate in the Top-Two primary, that person is simply placed on the
16 general election ballot and can only be elected from the general election ballot.

17 22. California does not allow write-in candidates on the general election ballot
18 in races subject to the Top-Two primary.

19 23. There is no way for any candidate who does not finish in first or second
20 place in the Top-Two primary to obtain access to the general election ballot.

21 24. Unless a candidate for an elective office in California that is subject to the
22 Top-Two primary finished in first or second place in the Top-Two primary, such candidate cannot
23 be elected into office and voters cannot cast their vote in the general election for any such
24 candidate.

25 25. Proposition 14 and the adoption of the Top-Two primary effected a substantial change in
26 the California electoral process.

1 26. Prior to its passage, parties would nominate a candidate for elective office
 2 and the nominee of a qualified political party would be placed on the general election ballot. That
 3 is no longer the case.

4 27. In the years since the passage of Proposition 14 and the adoption of the
 5 Top-Two primary in California, when there is at least one Republican on the primary ballot and
 6 one Democrat on the primary ballot no minor party candidate ever finishes in the top two.³ The
 7 barrier to minor party candidates and their voting supporters has been unconstitutionally
 8 insurmountable, as the historical record now establishes.

9 28. As a direct result of the adoption of the Top-Two primary, there is no
 10 feasible opportunity for any political candidate who does not represent the Democratic or
 11 Republican Party to obtain access to the general election ballot in California where there is more
 12 than one candidate representing the Democratic or Republican Party in the Top-Two primary.

13 29. The Top-Two primary effectively eliminates the ability of any candidate
 14 who is not a Democrat or Republican to appear on the general election ballot and effectively
 15 eliminates the ability of any voter to vote to elect any candidate who is not a member of the
 16 Democratic or Republican party.

17 30. By effectively denying access to the general election ballot for any
 18 political candidate other than a Democrat or Republican, California law unlawfully limits the
 19 ability of third-parties to attract members and grow and to obtain elective office in California. It
 20 also makes it much harder for a small political party to retain ballot-qualified status, a requirement
 21 to be able to list party preference on the ballot. *See* Cal. Const. Art. II §§ 5-6.

22 31. The discrimination effected by the Top-Two primary between the two major

³ There is only one single exception to this historical fact in any election subject to Top-Two since its enactment. In the 2024 Top-Two primary for California State Assembly District 18, the American Independent Party candidate, Andre Sandford finished second by a few votes over two Republican candidates who split the Republican vote. The Democratic party candidate overwhelmingly finished first. The split was Dem: 84.9%; AIP: 5.3%; Rep: 5.1%; Rep: 4.7%. California Secretary of State's *Statement of Vote*.

1 political parties on the one hand (Democratic and Republican parties) and minor parties (and
 2 independent candidates) violates the rights of Plaintiff parties, their members, their followers,
 3 Plaintiff candidates and voters and those other eligible voters who wish to cast their vote for them
 4 on the general election ballot, guaranteed under the First Amendment and under the Equal
 5 Protection Clause of the Fourteenth Amendment to the United States Constitution. The barring of
 6 write-in candidates from the ballot further impermissibly restricts the exercise of these
 7 fundamental constitutional rights and effectively disenfranchises those voters who wish to vote for
 8 the write-in candidate of their choice.⁴

9 32. California's Top-Two primary system, in conjunction with other California
 10 ballot access laws, unconstitutionally violates the First and Fourteenth Amendment rights of
 11 minor parties, their candidates, voters who wish to cast their votes for them for elective office, and
 12 independent candidates and their supporters and voters, including, but not limited to, the right to
 13 vote to further their political beliefs and otherwise meaningfully vote, the right to associate⁵ with
 14 others who share political beliefs, the right to be a candidate whom voters can elect.⁶

15 33. In a presidential election year, the provision under California law for
 16 holding the Top-Two primary in early March, Cal. Elec. Code § 1202, further violates the First
 17 and Fourteenth Amendment rights of Plaintiffs, their members and candidates, and of the voters
 18 and is plainly unconstitutional.

19 34. Plaintiffs, members and candidates of the Plaintiff political parties, and
 20 California's voters have been proximately harmed and severely burdened by the passage,

⁴ Cal. Elec. Code, § 8606; Cal. Const. Art. II, §§ 5-6.

⁵ The exclusion of candidates "burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

⁶ "[A]n election campaign is a means of disseminating ideas as well as attaining political office." *Ill. State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979).

1 enforcement, and application of the Top-Two primary system.

2 35. There is no state interest sufficient to constitutionally justify the Top-Two primary law as
3 applied to Plaintiffs under any constitutional analysis.⁷ There are viable alternatives readily
4 available that would serve any claimed state interest and not violate the rights of the Plaintiffs.

5 36. For example, there is no legitimate argument that can be made to the effect that the Top-
6 Two primary law serves a state interest by limiting ballot overcrowding or voter confusion. Since
7 Top-Two became the law, the primary ballots are by far more crowded than primary ballots prior
8 to Top-Two. There are many viable alternatives to meets these state interests without limiting
9 access to the general election ballot to two candidates, especially with the demonstrated history
10 here of the exclusion of minor party candidates and independents from the general election ballot
11 since Top-Two became the law. California has not and cannot demonstrate that limiting the
12 general election ballot to two candidates is necessary or even rationally related to prevent ballot
13 overcrowding or voter confusion, let alone that there is a compelling basis for it or that it is the
14 least restrictive means for meeting any such purported state interest.

15 37. Similarly, there is no legitimate argument that can be made that the Top-Two system
16 serves a state interest in increasing voter participation and certainly not that Top-Two is even
17 rationally related to such a purported state interest, let alone the least restrictive means of serving
18 that interest. Quite to the contrary, not only has Top-Two failed to increase voter participation; it
19 has had the effect of decreasing voter participation.

20 38. Since Top-Two became the law, voter participation has been lower in both the
21 primaries and the general election. Indeed, in 2014, voter participation in the primary at 25.17%
22 was the lowest in California history in a midterm year. In 2022, voter participation in the primary
23 at 33.20% was lower than in any midterm primary in any year from 1974 through 2010 (all prior

⁷ The Court should apply strict scrutiny and require compelling state interests. *See* Jessica A. Levinson, *Is the Party Over? Examining the Constitutionality of Proposition 14 as It Relates to Ballot Access for Minor Parties* 44 Loyola of Los Angeles Law Review 463, 506 (Winter 2011).

1 to Top-Two). Voter participation in the midterm general election in 2014 at 42.20% was far
 2 lower than voter participation in any midterm general election from 1974 through 2010 (all prior
 3 to Top-Two). In 2022 voter participation in the midterm general election at 50.80% was lower
 4 than in any midterm general election year from 1974-2010 except for 2002 (50.57%).⁸

5 39. Moreover, when the two candidates who qualify for the general election are from the same
 6 major parties, voter participation drops off steeply in such races. For example, in 2016 and 2018
 7 the two candidates who were permitted to appear on the general election ballot for the U.S. Senate
 8 race were both Democrats. In those races, of the voters who cast a ballot in 2016, 16.20% did not
 9 vote in the U.S. Senate race and for 2018, 12.58% of those who voted in the general election, did
 10 not cast a vote in the U.S. Senate race. With both candidates for Lt. Governor on the general
 11 election ballot for Lt. Governor in 2018 Democrats, 17.74% of the voters who otherwise cast
 12 ballots in the general election, did not cast a vote for Lt. Governor in the general election.⁹

13 40. Top-Two most certainly does not serve any state interest in increasing voter choice; indeed
 14 it needlessly, impermissibly, and dramatically limits voter choice with respect to the candidate to
 15 be elected. Top-Two, by definition, limits voter choice to one of a total universe of two
 16 candidates by prohibiting any route to the general election - the only election from which a
 17 candidate can actually be elected to office - other than through the Top-Two primary (from which
 18 no candidate is elected into office). Any voter who does not wish to vote for the Democratic or
 19 Republican party candidate in the general election under the Top-Two system cannot cast a vote
 20 for a candidate of choice, given the severe burden and barriers complained of herein. The history
 21 since Top-Two's enactment establishes that the general election choice has been and will be
 22 limited to either a Republican or Democratic candidate if there were two candidates in the primary
 23 from the Republican or Democratic party, completely shutting out any minor party candidate and

⁸ Source: California Secretary of State's annual "Statement of Vote."

⁹ Source: California Secretary of State's annual "Statement of Vote."

any voter wishing to cast a vote to actually elect a candidate other than a Republican or Democrat. The limitation on voter choice is further reflected by the blank ballots cast in the general elections referred to in ¶39 herein.

41. Defendant has at all times relevant to this action acted under color of state law and the rights violated by Defendant's actions and the application of California's Top-Two primary law and associated provisions as described herein have been clearly established rights under the First and Fourteenth Amendments for many years.

42. Defendant's actions under color of law have deprived and will continue to deprive Plaintiffs and their members, candidates, and voters of their fundamental constitutional rights and will continue to inflict continuing and irreparable injury to them.

CAUSE OF ACTION (42 U.S.C. § 1983)

Violation of the First and Fourteenth Amendments to the United States Constitution¹⁰

43. Paragraphs 1-36 of this Complaint are incorporated and restated herein as if expressly set forth.

44. California's Top-Two primary system, set forth in the California Constitution as Article II, § 5, and in corresponding provisions of California's Election Code, is unconstitutional as applied to these Plaintiffs.

45. The Top-Two primary system, in combination with California's other ballot access laws, provides an unconstitutional barrier to ballot access for minor parties, their candidates and prospective candidates, voters who would like to cast their ballot for their candidates, and others who wish to associate with them for political purposes, in violation of their

¹⁰ **"The constitutional right of citizens to create and develop new political parties derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation."** *Norman v. Reed*, 502 U.S. 279, 288-89 (1992).

rights under the First and Fourteenth Amendments to the United States Constitution.

46. In a presidential election year, the scheduling of the Top-Two primary for the first Tuesday after the first Monday in March, in combination with California's other ballot access laws, violates the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. Cal. Elec. Code §1202.¹¹

47. California law that prohibits The American Solidarity Party of California and other parties similarly situated from listing their party name on the ballot and, instead, requires their ballot label to be "party preference: none" - Cal. Elec. Code §§ 8002.5 and 13105 - violates the First and Fourteenth Amendments to the United States Constitution.

48. California's prohibition on write-in candidates, in combination with California's other ballot access laws, violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. Cal. Elec. Code, § 8606; Cal. Const. Art. II, §§ 5-6.

49. California's Top-Two primary system unconstitutionally discriminates against minor political parties and their members, candidates, voters, independent candidates, and those who would associate with them and seek to endorse, promote, and advance their political agenda, in favor of the two major political parties, the Democratic and Republican parties and their members, candidates, voters, and associates. It provides an historically insurmountable barrier to the general election ballot access in any election race subject to the Top-Two primary system in which there are two or more candidates from either the Democratic or Republican parties.

50. California's Top-Two system has the effect of disenfranchising voters who

¹¹ For a list of approximately 50 cases in which similarly early deadlines have been struck down, See "Lawsuits Which Enjoined or Overturned Early Petition Deadlines" <https://ballot-access.org/2019/03/31/march-2019-ballot-access-news-print-edition/>. See also, *Libertarian Party v. Krebs*, 290 F. Supp. 3d 902 (D. S.D. 2018); *Porter v. Pate*, 2022 U.S. Dist. 241720, 2022 WL 19655786 (S.D. Iowa, April 8, 2022).

wish to cast their ballot with respect to any of the elective offices subject to the Top-Two primary system, for a minor party candidate or any candidate of their choice other than a candidate representing the Democratic or Republican parties. It denies voters their right to express their political beliefs and agenda through a candidate of choice and it prevents minor parties from growing, from attaining and maintaining ballot-qualified status, and it restricts meaningful participation in the democratic political process.

CLAIMS FOR RELIEF¹²

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Enter a judgment declaring California's Top-Two primary system, as codified in the California Constitution and the California Election Code, including all provisions of California law identified and described herein, to be violative of the First and Fourteenth Amendments to the United States Constitution and otherwise unconstitutional as applied to Plaintiffs;
2. Award Plaintiffs reasonable attorney's fees and costs of this action;
3. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

"In our political life, third parties are often important channels through which political dissent is aired: 'All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, which innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society.'" *Sweezy v. New Hampshire*, 354 U.S. 234, 250-251 (opinion of WARREN, C. J.). *Williams v. Rhodes*, 393 U.S. 23, 39 (1968) (Douglas, J., Concurring).

¹² " ...States may not employ ballot access limitations which result in the exclusion of minor parties from the ballot." *See Williams v. Rhodes, supra*. "The Constitution requires that access to the electorate be real, not 'merely theoretical.'" *American Party of Texas*, 415 U.S., at 783, quoting *Jenness v. Fortson*, 403 U.S. 431, 439." *Munro v. Socialist Workers Party*, 479 U.S. 189, 205 (1986).

Respectfully Submitted,

/s/ Soyeun D. Choi (SBN 211344)
Counsel for Plaintiffs

Soyeun D. Choi, Esq., PC
969G Edgewater Blvd, 314
Foster City, CA 94404
Telephone: (650) 380-6116;
E-mail: Soyeun@SoyeunEsq.com

/s/ David I. Schoen
Counsel for Plaintiffs
pro hac vice

David I. Schoen
Attorney at Law
2800 Zelda Road, Suite 100-6
Montgomery, Alabama 36106
Telephone: 334-395-6611
Facsimile: 917-591-7586
E-Mail: Dschoen593@aol.com
Schoenlawfirm@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2025, I caused a copy of the foregoing First Amended Complaint to be served on all counsel of record by filing the same in this Court, through the ECF system.

/s/ David I. Schoen
Counsel for Plaintiffs
pro hac vice